

environmental impacts, and the public comments that have been received and evaluated.

**DATES:** The Final GMP/EIS will be on public review until December 4. Any review comments must be postmarked no later than December 4, and addressed to the Superintendent, Timucuan Ecological and Historic Preserve, 13165 Mt. Pleasant Road, Jacksonville, Florida 32225.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Timucuan Ecological and Historic Preserve, 13165 Mt. Pleasant Road, Jacksonville, Florida 32225, Telephone: (904) 221-5568.

Copies of the Final GMP/EIS are available for review at the preserve. A limited number of copies are available on request from the Superintendent at the above address.

**SUPPLEMENTARY INFORMATION:** The material contained in the Final GMP/EIS for the Timucuan Ecological and Historic Preserve is to be integrated with the Draft GMP/EIS. This integrated document (i.e., combined Draft and Final GMP/EISs) provides management guidance for concerns of the preserve related to protection of the important ecosystem; impacts on plant and animal species, especially those listed as threatened, endangered, or of special concern; threats to important cultural resources; landownership or land control and land uses; interpretation of the preserve's diverse resources and unique ecology for residents and visitors; and appropriate types and levels of use by humans for residing, working, commuting, recreating, learning, hunting, and fishing.

Four alternative concepts are presented for future management and use of the preserve. The alternatives reflect a range of different strategies for meeting the purposes of the preserve. These strategies differ in the level of commitment required of the citizens of Jacksonville, landowners, State and local governments, the National Park Service, and other Federal agencies to protect preserve resources. The alternatives also differ in the relative priority given to protection and interpretation of a few known cultural resources and the broader setting of the preserve. The degree to which preserve purposes and management can be fulfilled in each alternative is described.

In all alternatives, the National Park Service would make development decisions at NPS-owned sites. At a minimum, modifications would be made at Fort Caroline National Memorial, the Theodore Roosevelt area, and Zephaniah Kingsley Plantation. Development Concept Plans for these

areas are presented and discussed. These concept plans focus on visitor experience/public use and physical development needs.

Dated: October 23, 1995.

W. Thomas Brown,

*Acting Field Director, Southeast Area.*

[FR Doc. 95-27149 Filed 11-1-95; 8:45 am]

**BILLING CODE 4310-70-M**

### **National Capital Area, Public Affairs; Notice of Public Meeting**

The National Park Service is seeking public comments and suggestions on the planning of the 1995 Christmas Pageant of Peace, which opens December 6 on the Ellipse, south of the White House.

A public meeting will be held at the National Park Service's National Capital Area building in East Potomac Park at 1100 Ohio Drive, SW., Room 234, at 9 a.m., on November 8, 1995. Persons who would like to comment at the meeting should notify the National Park Service by November 3, 1995, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at (202) 619-7223. Persons who cannot attend the meeting may send written comments to the Public Affairs Office, National Capital Area, 1100 Ohio Drive, SW., Room 107, Washington, DC 20242. Written comments will be accepted until November 24, 1995.

Dated: October 26, 1995.

Joseph Lawler,

*Acting Field Director, National Capital Area.*

[FR Doc. 95-27158 Filed 11-1-95; 8:45 am]

**BILLING CODE 4310-70-M**

### **INTERSTATE COMMERCE COMMISSION**

#### **Availability of Environmental Assessments**

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927-6203.

Comments on the following assessment are due 15 days after the date of availability:

AB-167 (Sub-No. 1152X), Consolidated Rail Corporation—Abandonment

Exemption—in Cook County, Illinois. EA available 10/23/95.

AB-6 (Sub-No. 375X), Abandonment of a line of railroad between BN MP 6.92 and BN MP 8.19 and the Cascade Pole Spur in and near Arlington in Shohomish County, WA. EA available 10/23/95.

AB-457X, RLTD Railway Corporation—Notice of Exemption—Abandonment from Renie's Point to Northport, in Leelanau County, MI. EA available 10/24/95.

AB-290 (Sub-No. 177X), Norfolk Southern Railway Company—Abandonment—in Pittsylvania County, Virginia. EA available 10/24/95.

AB-55 (Sub-No. 514X), CSX Transportation, Inc.—Abandonment—in Monroe and Owen Counties, Indiana. EA available 10/27/95.

AB-32 (Sub-No. 64X), Boston and Maine Corporation—Abandonment and Discontinuance of Service—Rensselaer County, NY. EA available 10/27/95.

AB-290 (Sub-No. 176X), Norfolk and Western Railway Company—Abandonment—at Des Moines, IA. EA available 10/27/95.

Comments on the following assessment are due 30 days after the date of availability:

AB-455X, Ashley, Drew and Northern Railway Company—Abandonment and Discontinuance of Service. EA available 10/24/95.

Vernon A. Williams,

*Secretary.*

[FR Doc. 95-27196 Filed 11-1-95; 8:45 am]

**BILLING CODE 7035-01-P**

### **DEPARTMENT OF JUSTICE**

#### **Antitrust Division**

#### **United States v. Reuter Recycling of Florida, Inc. and Waste Management Inc. of Florida; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Consent Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in a civil antitrust case, *United States v. Reuter Recycling of Florida, Inc. and Waste Management Inc. of Florida*, Civ. No. 1:95CV01982.

On October 20, 1995, the United States and the State of Florida filed a Complaint seeking to enjoin a

transaction by which Waste Management Inc. of Florida agreed to acquire Reuter. Waste Management and its affiliates constitute one of only two private competitors in the market for solid waste disposal services in Broward and Dade Counties, Florida. The other private competitor—Chambers Waste Systems of Florida, Inc.—can only effectively compete in that market because it has access to a transfer station owned by Reuter. Waste Management would acquire that transfer station in the acquisition. The Complaint alleged that the proposed acquisition may substantially lessen competition in the municipal solid waste disposal services market in Dade and Broward Counties, Florida, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment requires defendants to give Chambers unimpeded access to the Reuter Transfer Station for up to five years. It also requires defendants to make certain real estate available to Chambers for up to five years upon which Chambers may construct its own transfer station. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

The Public is invited to comment to the Justice Department and to the Court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, U.S. Department of Justice, Antitrust Division, 1401 H Street N.W., Room 4000, Washington, D.C. 20530 (telephone: (202) 307-5777). Comments must be received within sixty days.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: (202) 514-2481). Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,  
*Director of Operations.*

In the United States District Court for the District of Columbia

In the matter of: UNITED STATES OF AMERICA, and STATE OF FLORIDA, by and through its Attorney General, Plaintiffs, v. REUTER RECYCLING OF FLORIDA, INC., and WASTE MANAGEMENT INC. OF FLORIDA, Defendants. Civil Action No.: 1:95CV01982; Filed: 10/20/95; Judge Royce C. Lambert.

#### Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the

State of Florida, acting under the direction of the Attorney General of the State of Florida, plaintiffs, bring this civil action to obtain equitable and other relief against the defendants named and allege as follows:

1. The United States and the State of Florida bring this antitrust case to prevent the proposed acquisition by Waste Management Inc. of Florida ("WMF") of Reuter Recycling of Florida, Inc. ("Reuter"). The acquisition will reduce the entities competing for municipal solid waste disposal service in the relevant geographic market from three to two and will substantially increase concentration among municipal solid waste disposal entities in that market.

2. If this transaction is not blocked, consumers will be harmed by having to pay significant and immediate price increases for municipal solid waste disposal service, as the history in the market indicates. After Chambers Waste Systems of Florida, Inc. ("Chambers") entered the relevant geographic market by using a transfer station owned by Reuter, prices for municipal solid waste disposal service dropped substantially. Consequently, this transaction must be enjoined to protect consumers.

#### I

##### *Jurisdiction and Venue*

3. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. 25, and 15 U.S.C. 26, to prevent and to restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Reuter and WMF are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action, over the parties, and venue is appropriate in this District, pursuant to 15 U.S.C. 22 and 28 U.S.C. §§ 1391 and 1337, since both defendants consent to personal jurisdiction in this proceeding.

#### II

##### *Defendants*

5. WMF is a Florida corporation with its principal offices in Pompano Beach, Florida. WMF provides municipal solid waste disposal service within the State of Florida. In 1994, WMF reported total revenues of over \$245 million.

6. Reuter is a Florida corporation with its principal offices in Pembroke Pines, Florida. Reuter provides municipal solid waste disposal service within the State of Florida through the Transfer Station Agreement with Chambers. In 1994, Reuter reported total revenues in excess of \$13 million.

#### IV

##### *Trade and Commerce*

7. Municipal solid waste is nonhazardous waste collected from households, and commercial and industrial establishments. It includes waste that is putrescible (such as garbage) and compactible but does not include construction and demolition debris. The waste is generally collected by municipalities or private haulers with collection trucks. When the collection truck is full, it must leave its collection route and travel to a municipal solid waste disposal site where the truck is emptied.

8. Municipal solid waste disposal service is the final disposal of municipal solid waste in a landfill or a facility that incinerates that waste. Municipal solid waste can be transported to a relatively distant final disposal site by using a transfer station. At a transfer station, municipal solid waste is received from municipal and private haulers. Generally, the waste is combined, further compacted, and then loaded into large tractor trailer trucks. These tractor trailer trucks can economically transport that waste a considerably longer distance to a final disposal site than can collection trucks.

9. The provision of municipal solid waste disposal service is a relevant product for purposes of analyzing this acquisition under the Clayton Act. There is no practical substitute for municipal solid waste disposal service to which a significant number of customers would switch in response to a small but significant, nontransitory increase in price imposed by all providers of municipal solid waste disposal service.

10. State and federal laws restrict the facilities that may accept municipal solid waste for final disposal. Municipal solid waste disposal service is provided to consumers in Dade and Broward Counties through facilities owned or operated by Defendant WMF, directly or through its affiliates, in Broward County, Florida and in Dade County, Florida, owned or operated by Dade County, Florida in Dade; and, owned by Chambers in Okeechobee County, Florida, about 100 miles north of Dade. Chambers transports municipal solid waste to its Okeechobee landfill from the Reuter transfer station in southern Broward pursuant to an agreement between Reuter and Chambers dated July 14, 1993 ("Transfer Station Agreement"). The Reuter transfer station is currently the only means by which Chambers can transport municipal solid waste from consumers in Dade and

Broward Counties to its landfill in Okeechobee County.

11. The relevant geographic market for purposes of analyzing this transaction is Broward and Dade Counties, Florida. The above facilities are the only significant disposal sites for Broward and Dade municipal solid waste. County-owned facilities in St. Lucie, Martin and Palm Beach Counties are not alternative municipal solid waste disposal sites for Dade and Broward Counties, since the distance from Dade and Broward Counties is too great to be economically travelled by collection trucks. In addition, these facilities do not generally take out-of-county waste and are much higher priced alternatives than the Okeechobee landfill for waste from the relevant geographic market. It is not economically efficient for municipal solid waste haulers to transport that waste long distances in collection trucks to a municipal solid waste disposal site. Consequently, haulers generally transport the waste to nearby landfills or incinerators or transfer stations that enable waste economically to be hauled to more distant disposal sites. Therefore, other municipal solid waste disposal sites outside the area are not substitutes for service provided by the facilities described in paragraph 10.

12. Defendant WMF and Chambers compete with each other and with Dade to provide municipal solid waste disposal service to municipalities and private haulers in the relevant geographic market. WMF, Chambers, and Dade bid against one another for the right to dispose of municipal solid waste in that area. The vast majority of this waste is generated in Dade. Chambers is currently able to compete for this waste only because it has access to the transfer station owned by Defendant Reuter in southern Broward County, Florida pursuant to the Transfer Station Agreement.

13. The acquisition of Reuter by WMF will have the effect of excluding Chambers from its only current means of economically providing municipal solid waste disposal service in Broward and Dade Counties in competition with WMF and Dade and will therefore reduce the firms competing for municipal solid waste disposal service there from three to two. Therefore, the acquisition of Reuter by WMF will substantially increase concentration among municipal solid waste disposal entities in the relevant geographic market. Using a measure of market concentration called the HHI, defined and explained in Appendix A, the acquisition of Reuter by WMF would

increase the HHI by about 1,700 to about 5,000.

14. The only significant competitor of WMF that would remain after the acquisition is Dade County. Rivalry between WMF and Dade County alone will not prevent prices from rising, because Chambers provides a substantial competitive check on WMF's and Dade County's individual ability to set prices for their services. This is evidenced by the substantial drop in municipal solid waste disposal service prices that followed Chambers' entry into the market.

15. There are substantial barriers to entry into municipal solid waste disposal service in the relevant geographic market. The siting, permitting and construction of a municipal solid waste landfill or incinerator within or near Dade will take well in excess of two years, if such a facility is permitted to be constructed at all. Furthermore, the zoning, siting, permitting and construction of a municipal solid waste transfer station in a commercially and economically feasible location to receive municipal solid waste from the relevant geographic market is likely to take more than two years.

V

#### *Violation Alleged*

16. On June 1, 1995, defendant WMF and the parent of Reuter signed a purchase agreement providing for the purchase by WMF of all of the outstanding common stock of Reuter.

17. The effect of the acquisition of Reuter by WMF may be substantially to lessen competition in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual competition and potential competition between WMF and Chambers in municipal solid waste disposal service in the above-described geographic market will be eliminated; and

(b) Actual and potential competition generally in municipal solid waste disposal service in that geographic market may be substantially lessened.

#### *Prayer*

WHEREFORE, plaintiffs pray,

1. That the proposed acquisition of the common stock of Reuter by WMF be adjudged to be in violation of Section 7 of the Clayton Act;

2. That the defendants and all persons acting on their behalf be permanently enjoined from carrying out the acquisition of the common stock of Reuter by WMF or any similar agreement, understanding, or plan.

3. That the plaintiffs have such other and further relief as the Court may deem just and proper; and

4. That plaintiffs recover the costs of this action.

Dated: This 20th day of October, 1995.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Anne K. Bingaman,

*Assistant Attorney General*

Lawrence R. Fullerton,

*Deputy Assistant Attorney General*

Constance K. Robinson,

*Director of Operations*

Charles E. Biggio,

*Senior Counsel*

Anthony V. Nanni,

*Chief, Litigation I Section*

Willie L. Hudgins, Jr.

*Attorneys, U.S. Department of Justice, Antitrust Division.*

Nancy H. McMillen,

*Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, 202/307-5777*

For Plaintiff State of Florida:

Robert A. Butterworth,

*Attorney General.*

Patricia A. Connors,

*Assistant Attorney General.*

Lizabeth A. Leeds,

*Assistant Attorney General.*

H. Edward Burgess, Jr.,

*Assistant Attorney General, Office of Attorney General, State of Florida, The Capitol, Tallahassee, FL 32399-1050, (904) 488-9105.*

#### *Appendix A*

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, respectively, the HHI is 2600 (30 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market consists of a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and may also increase as the disparity in size between the leading firms and the remaining firms increases. Thus, a market of two firms with shares of 60 and 40 percent would have an HHI of 5200 (60 squared + 40 squared = 3600 + 1600 = 5200).

The Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines consider that markets in which the HHI is between 1000 and 1800 are moderately concentrated and those in which the HHI is in excess of 1800 points are concentrated. Transactions that increase the HHI by more than 100 points in moderately concentrated and concentrated markets

presumptively raise antitrust concerns under the Merger Guidelines.

#### United States District Court for the District of Columbia

In the matter of: UNITED STATES OF AMERICA, and STATE OF FLORIDA, by and through its Attorney General, Plaintiffs, v. REUTER RECYCLING OF FLORIDA, INC., and WASTE MANAGEMENT INC. OF FLORIDA, Defendants. Civil Action No.: 1:95CV01982, Filed: 10/20/95.

#### Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)-(h)), and without further notice to any party or other proceedings, provided that Plaintiffs have not withdrawn their consent, which they may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court; and

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall become effective when, if and only if, defendant Waste Management Inc. of Florida acquires a majority of the outstanding shares of defendant Reuter Recycling of Florida, Inc. If the Plaintiffs withdraw their consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated this 20th day of October, 1995.

Respectfully submitted,

For the Plaintiff the United States of America:

Anne K. Bingaman,  
*Assistant Attorney General, Antitrust Division, U.S. Department of Justice.*

Lawrence R. Fullerton,  
*Deputy Assistant Attorney General.*

Constance K. Robinson,  
*Director of Operations.*

Charles E. Biggio,  
*Senior Counsel.*

Anthony V. Nanni,  
*Chief, Litigation I Section.*

Willie L. Hudgins, Jr.,  
*Attorney, U.S. Department of Justice, Antitrust Division.*

Nancy H. McMillen,  
*Attorney, U.S. Department of Justice, Antitrust Division, City Center Building, Suite 4000, 1401 H Street, NW., Washington, DC 20530, 202/307-5777.*

For Plaintiff State of Florida:

Robert A. Butterworth,  
*Attorney General.*

Patricia A. Connors,  
*Assistant Attorney General.*

Lizabeth A. Leeds,  
*Assistant Attorney General.*

H. Edward Burgess, Jr.,  
*Assistant Attorney General, Office of Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399-1050, (904) 488-9105.*

For the Defendant Reuter Recycling of Florida, Inc.:

John H. Kornis,  
*(D.C. Bar No. 142745), Oppenheimer, Wolff & Donnelly, 1020 19th Street, N.W., Suite 400, Washington, D.C. 20036, (202) 293-6300.*

For the Defendant Waste Management Inc. of Florida:

Michael Sennett,  
*Bell, Boyd & Lloyd, Three First National Plaza, Chicago, Illinois 60602, (312) 372-1121.*

Andrew N. Cook,  
*(D.C. Bar No. 416199), Bell, Boyd & Lloyd, 1615 L Street, N.W., Washington, D.C. 20036, (202) 466-6300.*

In The United States District Court for The District of Columbia

In the matter of: UNITED STATES OF AMERICA, and STATE OF FLORIDA, by and through its Attorney General, Plaintiffs, v. REUTER RECYCLING OF FLORIDA, INC., and WASTE MANAGEMENT INC. OF FLORIDA, Defendants. Civil Action No.: 1:95CV01982; Filed: 10/20/95.

#### Final Judgment

WHEREAS Plaintiffs, United States of America (hereinafter "United States") and the State of Florida (hereinafter "Florida"), having filed their Complaint in this action on October 20, 1995, and Plaintiffs and Defendants, by their respective attorneys, having consented

to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law; AND WHEREAS, Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the Plaintiffs intend Defendants to be required to preserve competition for solid waste disposal by honoring certain contracts, as amended, and by giving to a competitor an option to purchase real property capable of being used as a municipal solid waste transfer station to preserve competition in solid waste disposal in Dade and Broward Counties, Florida, now and in the future, and, by permitting a competitor to preserve its ability to compete for and to have access to capacity for sufficient volumes of municipal solid waste to remain a viable solid waste disposal competitor while it seeks another transfer station site;

AND WHEREAS, Defendants have represented that the contract changes and the option agreement to purchase real estate described below can and will be made and honored and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW, THEREFORE, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

#### I

##### *Jurisdiction*

This Court has jurisdiction of the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

#### II

##### *Definitions*

As used in this Final Judgment:

(A) "Broward" means Broward County, Florida.

(B) "Chambers" means Chambers Waste Systems of Florida, Inc., a subsidiary of USA Waste Services, Inc. Chambers is a corporation organized and existing under the laws of the State of Florida with its principal offices in Okeechobee, Florida.

(C) "Dade" means Dade County, Florida.

(D) "Defendants" means Reuter and WMF, as hereinafter defined.

(E) "Reuter" means defendant Reuter Recycling of Florida, Inc. Reuter is a corporation organized and existing under the laws of the State of Florida with its principal offices in Pembroke Pines, Florida.

(F) "Solid waste disposal service" means the final disposal of municipal solid waste, generally in a landfill or incineration facility.

(G) "Transfer Station Agreement" means the agreement between Reuter and Chambers dated as of July 14, 1993 pursuant to which Reuter, among other things, accepts for transfer certain solid waste material delivered by Chambers or Chambers' subcontractors. A copy of the Transfer Station Agreement is attached as Exhibit A.

(H) "Amendment to Transfer Station Agreement" means the Agreement between Reuter and Chambers dated October 20, 1995 modifying the Transfer Station Agreement. A copy of the Amendment to Transfer Station Agreement is attached as Exhibit B.

(I) "Option Agreement" means the Agreement between Reuter and Chambers dated October 20, 1995. A copy of the Option Agreement is attached as Exhibit C.

(J) "WMF" means defendant Waste Management Inc. of Florida, a subsidiary of Waste Management, Inc. WMF is a corporation organized and existing under the laws of the State of Florida with its principal offices in Pompano Beach, Florida.

(K) "Acquisition" means the acquisition of the majority of the outstanding stock of Reuter by WMF.

(L) "Reuter Transfer Station" means the facility owned by Reuter and located at 2079 Pembroke Road, Pembroke Pines, FL which currently, among other things, accepts for transfer certain solid waste material delivered by Chambers or Chambers' subcontractors and also accepts waste from the cities of Pompano Beach, Pembroke Pines, Dania, and Hallandale, FL.

### III

#### *Applicability*

This Final Judgment applies to Defendants and to their officers, directors, managers, agents, employees, successors, assigns, affiliates, parents and subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and

nothing herein shall be construed to provide any rights to any third party.

### IV

#### *Entry Into and Compliance With Agreements*

On or before the date the Acquisition is consummated, Reuter shall enter into the Amendment to Transfer Station Agreement and the Option Agreement. Defendants shall be bound by the terms of the Transfer Station Agreement, as modified by the Amendment to Transfer Station Agreement, and the Option Agreement. Defendants shall not convey to any person other than Chambers, the property subject to the Option Agreement, prior to the later of July 14, 1998 or any extension of that Option Agreement, except as provided in the Option Agreement. Defendants shall not exercise their right to replace Chambers as the Facility operator under Paragraph 3f of the Amendment to Transfer Station Agreement without the prior approval of the United States, in consultation with Florida.

### V

#### *Termination of the Agreements*

In the event Chambers has secured the right to use and is using another transfer station capable of serving Broward or Dade Counties prior to July 14, 1998, Defendants may notify Plaintiffs of that fact and Defendants may request in writing that they be relieved of the obligation to extend the term of the Transfer Station Agreement as set forth in Paragraph 2 of the Amendment to Transfer Station Agreement, and of the obligation to convey property under the Option Agreement. The United States may grant one or both of Defendants' requests if it determines, in its sole discretion after consultation with Florida, that Chambers can effectively compete in the relevant markets without access to the Reuter Transfer Station or without access to the property subject to the Option Agreement.

### VI

#### *Interim Preservation of Viable Competition*

(A) Defendants shall not enter into any contract or contracts, with any firm listed on Exhibit D, having a term in excess of one (1) year, or having multiple consecutive one (1) year terms, for the disposal of solid waste, where any such waste would be transported through the Reuter Transfer Station for disposal elsewhere. Exhibit D is a list of the customers of Chambers for whom Chambers uses the Reuter Transfer Station to enable it to dispose of solid

waste as of the date this Final Judgment is filed ("Chambers Customers").

(B) Defendants' obligations under Paragraph VI.A. shall terminate upon the United States providing Defendants with written notice, following application by Defendants, that the United States, in its sole discretion after consultation with Florida, has determined that Chambers can compete effectively in the relevant market if Defendants are permitted to contract with Chambers' Customers as proscribed in Paragraph VI.A. In any event, Paragraph VI.A. shall terminate on the date the Transfer Station Agreement, as amended by the Amendment to the Transfer Station Agreement, terminates.

(C) Nothing herein shall preclude Defendants from contracting with any of the Chambers' Customers for a period of one (1) year or less; or, for a period in excess of one (1) year where that customer's solid waste is not transported by Defendants, directly or indirectly, through the Reuter Transfer Station.

### VII

#### *Defendants' Obligations of Noninterference and Assistance*

In the event that Chambers seeks to permit a new transfer station or seeks access to a new or existing transfer station other than the Reuter Transfer Station, Defendants shall take no action to protest, lobby against, object to, or otherwise impede, directly or indirectly, any attempts by Chambers to lease, purchase, site, obtain appropriate zoning for, obtain permits and any and all other governmental approvals for a solid waste transfer station capable of serving Broward or Dade, nor shall Defendants provide financing or other assistance to any person who does so. Furthermore, from the effective date of the Option Agreement through the termination date of that Agreement, including any extensions thereof, Defendants will cooperate with Chambers' efforts to obtain any necessary government approvals on the property subject to the Option Agreement.

Notwithstanding the provisions of this Final Judgment, Defendants may bid on and enter into contracts with municipal or governmental entities for the provision or use of transfer station facilities in Dade and Broward.

### VIII

#### *Acquisition of the Option Property*

If the option to purchase under the Option Agreement is exercised, Defendants shall not, without prior

written consent of the United States, after consultation with Florida, re-acquire any of the property conveyed pursuant to the Option Agreement.

## IX

### *Reporting and Plaintiffs' Access*

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiffs shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Florida Attorney General or his duly authorized representative, respectively, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, be permitted:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendants, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview officers, employees, or agents of Defendants, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Florida Attorney General or his duly authorized representative, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, Defendants shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States government or of the State of Florida, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to Plaintiffs, Defendants represent and identify in writing the materials in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days notice

shall be given by Plaintiffs to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

## X

### *Further Elements of Judgment*

(A) This Final Judgment shall expire on the tenth anniversary of the date of its entry.

(B) Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

## XI

### *Public Interest*

Entry of this Final Judgment is in the public interest.

Entered: \_\_\_\_\_

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Note: Exhibits A, B, C & D will not be published in the Federal Register but a copy can be obtained from the Department of Justice, Antitrust Division's, Legal Procedures Office at (202) 514-2481.

United States District Court for the District of Columbia

In the matter of: UNITED STATES OF AMERICA, and STATE OF FLORIDA, by and through its Attorney General Plaintiffs, v. REUTER RECYCLING OF FLORIDA, INC. and WASTE MANAGEMENT INC. OF FLORIDA, Defendants. CIVIL ACTION NO.: 1:95CV01982; Filed: 10/20/95.

### *Competitive Impact Statement*

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

## I

### *Nature and Purpose of the Proceeding*

The United States filed a civil antitrust Complaint on October 20, 1995, alleging that the proposed acquisition of Reuter Recycling of Florida, Inc. ("Reuter") by Waste Management Inc. of Florida ("WMF") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The State of Florida, by and through its Attorney General, is

a co-plaintiff with the United States in this action.<sup>1</sup> WMF and Reuter are two of only three entities that provide municipal solid waste disposal service in Broward and Dade Counties, Florida.

The Complaint alleges that the combination of these two competitors would substantially lessen competition in solid waste disposal service in Dade and Broward Counties, Florida. The prayer for relief seeks: (1) A judgment that the proposed acquisition would violate section 7 of the Clayton Act; and (2) a permanent injunction preventing WMF from acquiring the stock of Reuter. At the same time that suit was filed, a proposed Final Judgment was filed that was designed to eliminate the anticompetitive effects of the acquisition. Also filed was a Stipulation under which the parties consented to the entry of the proposed Final Judgment.

The proposed Final Judgment preserves competition that would have existed absent the acquisition by requiring defendants to give Chambers unimpeded access to the Reuter Transfer Station for up to five years from today. It also requires defendants to make certain real estate available to Chambers for up to five years from today upon which Chambers may construct its own transfer station.

The United States, its co-plaintiff, and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II

### *Description of the Events Giving Rise to the Alleged Violation*

#### *A. The Defendants and the Proposed Transaction*

WMF, based in Pompano Beach, Florida, is an indirect wholly-owned subsidiary of WMX Technologies, Inc., the world's largest solid waste hauling and disposal company, with operations throughout the United States. In 1994, WMF reported total revenues of over \$245 million.

Reuter, based in Pembroke Pines, Florida, is a subsidiary of Reuter Manufacturing, Inc., formerly known as Green Isle Environmental Services, Inc. Reuter operates a municipal solid waste transfer station and does some recycling

<sup>1</sup> The APPA obligates only the United States to file a Competitive Impact Statement.

at a facility in Broward County, Florida. In 1994, Reuter reported total revenues of over \$13 million.

On June 1, 1995, WMF entered into an agreement to purchase from Green Isle Environmental Services, Inc. all of the outstanding common stock of Reuter for about \$18 million.

#### B. The Solid Waste Disposal Industry

Municipal solid waste is nonhazardous waste collected from households and commercial and industrial establishments. It includes waste that is putrescible (such as garbage) and compactible, but does not include construction and demolition debris. Municipal solid waste is collected by municipalities or private haulers either with collection trucks, that compact the waste in the truck, or roll-off trucks. When the collection truck is full, it leaves its collection route and travels to a municipal solid waste disposal site where the truck is emptied. Roll-off trucks pick up large containers and take them to the disposal site or transfer station individually.

Solid waste disposal service is the final disposal of municipal solid waste, generally in a landfill or a facility that incinerates that waste. It is generally not efficient to transport municipal solid waste in collection trucks long distances to disposal sites. Municipal solid waste can be transported to a relatively distant final disposal site by using a transfer station. Municipal solid waste accepted at a transfer station is combined, further compacted, and then loaded into large tractor trailer trucks. These tractor trailer trucks, which can transport a volume of waste equal two to four times that of collection trucks, can economically transport that waste a considerably longer distance to a disposal site than can collection trucks.

Because of its unique disposal function, a small but significant increase in the price of municipal solid waste disposal service by all suppliers would not be rendered unprofitable by consumers substituting to any other type of disposal service. State and federal laws restrict the facilities that may accept municipal solid waste for final disposal. In Florida, it is restricted to Class I and Class II landfills<sup>2</sup> and to facilities that incinerate the waste. Disposal of municipal solid waste, as compared to disposal of construction

and demolition or other types of debris, accounts for a large percentage of total disposal service revenues.

#### C. Competition in the Relevant Market

WMF and Chambers Waste Systems of Florida, Inc. ("Chambers"), through its use of the Reuter Facility pursuant to an agreement between Chambers and Reuter, compete directly in providing municipal solid waste disposal service in Broward and Dade Counties.

WMF, through its affiliates, owns or operates a Class I landfill and two incineration facilities<sup>3</sup> in Broward County that accept and dispose of municipal solid waste. It also owns a Class I landfill in Dade County that disposes of such waste. Dade County owns or operates several Class I landfills and one incineration facility in Dade County.

Chambers owns a Class I landfill located in Okeechobee County, Florida, about 100 miles north of Dade County, that accepts and disposes of municipal solid waste from Dade and Broward Counties. Pursuant to a contract containing an initial term of five years with Reuter, dated July 14, 1993 ("Transfer Station Agreement"), Chambers currently transports municipal solid waste to its Okeechobee landfill from the transfer station owned by Reuter, which is located in southwestern Broward County.

#### D. Nature of Competition

Prior to July 1993 WMF and Dade County were the only significant suppliers of municipal solid waste disposal service in Dade and Broward Counties. When Chambers entered the market, prices dropped substantially. Chambers, therefore, has provided a significant competitive constraint on pricing in the market. WMF and Chambers compete for municipal solid waste disposal brought to their facilities on a short-term basis absent any contract and for contracts with municipalities and private haulers in the area that are not at the time committed to a disposal site pursuant to a long-term contract. Almost all of the solid waste collected in Broward County is under long-term contracts. Consequently, the vast majority of the customers for which WMF, Dade County, and Chambers currently compete generate municipal solid waste in Dade County, Florida. Because its

solid waste disposal site is over 100 miles north of Dade County, Chambers is able to compete for these customers in Dade County only because it has access to the transfer station currently owned by Reuter—the transfer station that WMF will control if it acquires the stock of Reuter.

The relevant geographic market for purposes of analyzing this transaction is Broward and Dade Counties, Florida. The WMF Class I landfills and incineration facilities, the Dade County incinerator and Class I landfills, and Chambers' Okeechobee Class I landfill are the only significant disposal sites for Broward and Dade municipal solid waste.<sup>4</sup> It is not economically efficient for municipal solid waste haulers to transport that waste long distances in collection trucks to a municipal solid waste disposal site. Consequently, haulers generally transport the waste to nearby landfills, incinerators, or to transfer stations that enable waste economically to be hauled to more distant disposal sites.

#### E. Anticompetitive Consequences of the Acquisition

The acquisition will place the Reuter Transfer Station in the hands of WMF, who, as a competitor, will have the incentive and opportunity to deprive Chambers of its only current means of economically providing municipal solid waste disposal service in Dade County. This would remove the competitive constraint of Chambers and facilitate WMF's exercise of market power (i.e. the ability to increase prices to consumers in Broward and Dade Counties). Specifically, the Complaint alleges that the acquisition of Reuter by WMF will have the effect of substantially increasing concentration in an already highly concentrated, difficult to enter market; the HHI would increase by about 1,700 to about 5,000.<sup>5</sup>

The only significant competitor of WMF that would remain after the

<sup>4</sup> Broward County has a Class I landfill, but that landfill does not currently accept municipal solid waste. It was constructed to accept waste until the two resource recovery facilities came on line, to accept waste in the event of an incinerator shutdown, and for its future use, if needed. There are landfills owned by St. Lucie County, and Martin County, and an incinerator owned by Palm Beach County that are within 100 miles of Dade County. However, they are not good alternatives to disposal sites in Dade and Broward Counties because the distance is too great for collection trucks to reach economically. Furthermore, they are much higher-priced alternatives than the Okeechobee landfill and do not generally accept from Dade or Broward Counties.

<sup>5</sup> These HHI's are calculated using a bidding model. The three existing competing bidders for municipal solid waste disposal service in the market are treated as equal-sized firms for purposes of this HHI calculation.

<sup>2</sup> A Class I landfill in Florida is a landfill that receives an average of 20 tons or more of solid waste per day. Each is permitted to receive general, non-hazardous household, commercial, industrial, and agricultural wastes. Class II landfills may receive up to 20 tons per day of these same types of waste, but there are no such landfills in Dade or Broward counties, FL.

<sup>3</sup> The incinerators are resource recovery facilities owned by Wheelabrator North Broward Inc. and Wheelabrator South Broward Inc., affiliates of WMF. These facilities accept municipal solid waste pursuant to a contract with Broward County. These facilities also compete for waste from other haulers and municipalities.



acquisition is Dade County. Rivalry between WMF and Dade County alone will not prevent prices from rising, because Chambers provides a substantial competitive check on WMF's and Dade County's individual ability to set prices for their services. This is evidenced by the substantial drop in municipal solid waste disposal prices that followed Chambers' entry into the market.

The Complaint alleges that new entry in the Broward and Dade County market is unlikely to counteract these anticompetitive effects. The siting, permitting and construction of a municipal solid waste landfill or incinerator within or near Dade will take well in excess of two years. In fact, it is unlikely that a new municipal solid waste landfill or incinerator could be constructed in the area in the foreseeable future, given opposition from the nearby general public to such facilities.

The zoning, siting, permitting and construction of a municipal solid waste transfer station in a commercially and economically feasible location to receive municipal solid waste from the relevant geographic market can also be expected to take more than two years due to public opposition in this geographic market.

### III

#### *Explanation of the Proposed Final Judgment*

The provisions of the proposed Final Judgment are designed to preserve the level of competition that would exist absent this acquisition, and thereby eliminate the anticompetitive effects of the acquisition in municipal solid waste disposal service in the relevant geographic market.

#### A. Entry Into and Compliance With Agreements

Section IV of the proposed Final Judgment requires that Reuter shall enter into two agreements on or before the date WMF purchases the majority of the stock of Reuter. First, Reuter is required to enter into a contract with Chambers entitled "Amendment to Transfer Station Agreement" (hereinafter "Amendment"). Second, Reuter is required to enter into an Option Agreement, giving Chambers an irrevocable option to purchase certain property from Reuter upon which to construct its own municipal solid waste transfer station. Section IV also prohibits Reuter from conveying to anyone other than Chambers the property subject to the Option Agreement prior to the later of July 14,

1998 or any extension of the Option Agreement. Section IV obligates Reuter and WMF to comply with the terms of both agreements.

#### 1. Amendment to Transfer Station Agreement

On July 14, 1993, Reuter and Chambers entered into the Transfer Station Agreement. That contract permitted Chambers to use the facility built by Reuter as a transfer station to transport waste to Chambers' Okeechobee landfill in south central Florida.

The agreement has a five year term and could be extended by mutual agreement for two additional five year terms. Reuter operated the transfer station under this agreement and agreed to pay Chambers to transport municipal solid waste from the transfer station to Chambers' landfill in Okeechobee County. In return, Chambers agreed to pay Reuter for operating the transfer station. Initially, the vast majority of waste transported through the transfer station came from four cities in Broward County—Pompano Beach, Pembroke Pines, Dania, and Hallandale—pursuant to a 20 year contract between Reuter and those cities. However, the agreement also assured Chambers the right to bring up to 800 tons per day of waste from its own customers to the transfer station for transportation to its landfill.

The Amendment requires WMF to honor the Transfer Station Agreement giving Chambers access to the transfer station and modifies that agreement in ways that prevent WMF from interfering with Chambers' use of the transfer station to compete with WMF. The Amendment also eliminates the provision that would have given WMF veto power over an extension of the contract beyond its initial five year term. The Amendment gives to Chambers, in its sole discretion, the option to extend the Transfer Station Agreement for two additional one year terms.

The Amendment modifies the Transfer Station Agreement to permit Chambers to operate approximately one half of the transfer station (roughly its current capacity) as an independent entity. In effect, Chambers will replace Reuter as the operator of the transfer station for the next three years, handling all waste from its customers and any waste not recycled from the four cities. During any extension period, Chambers will continue to operate about half of the transfer station, handling waste from its own customers.

The Amendment also prohibits WMF from reducing Chambers' capacity in the transfer station as the Transfer Station

Agreement would have allowed. The Amendment prohibits WMF from reducing the 800 ton per day capacity Chambers currently has to use for the waste of its own customers.

These, and other provisions in the Amendment, assure that Chambers can operate in the acquired transfer station as an independent competitive force in the solid waste disposal market as it would have been able to do absent the acquisition.

#### 2. Option Agreement

The proposed Final Judgment also requires Reuter to enter into an Option Agreement on or before the date WMF acquires a majority of Reuter's stock. The Option Agreement gives Chambers an irrevocable option for up to three years to purchase certain real estate. That real estate is on the grounds of the current Reuter Transfer Station facility. Chambers will have up to three years to seek necessary permits before it needs to pay Reuter any substantial monies for the real estate. Furthermore, during the initial three years of the Option Agreement, Chambers is not obligated to purchase the land. It may seek to permit the site for a transfer station without actually buying the real estate.

The Option Agreement also gives Chambers the right to extend the option for two additional one year periods upon payment to Reuter of a fee, part of which will be credited toward the purchase price if Chambers buys the property. Chambers' right to extend the Option Agreement is contingent upon Chambers' active pursuit of transfer station permits from the appropriate state and county authorities.

This Option Agreement provides Chambers with the right to purchase a well-situated piece of real estate upon which to permit and build its own transfer station for use in the long term. It gives Chambers up to five years to obtain any necessary permits on the land without actually purchasing the real estate from Reuter.

#### B. Termination of the Agreements

The proposed Final Judgment also provides that the obligations of the Defendants under the above agreements can be terminated under certain conditions. Specifically, if Defendants notify Plaintiffs that Chambers has secured the right to use and is using another transfer station capable of serving the relevant geographic market at current or increased capacity levels, Plaintiffs may relieve Defendants of the obligation to extend the Transfer Station Agreement or to hold open the Option Agreement. As provided in the proposed Final Judgment, however, the



Plaintiffs will not relieve Defendants of these obligations unless the United States has determined, after consultation with Florida, that Chambers can effectively compete in the relevant market without access to either the Reuter Transfer Station under the Transfer Station Agreement, as amended, or without the property subject to the Option Agreement.

#### C. Interim Preservation of Viable Competition

Section VI of the proposed Final Judgment assures that competition is not unduly undermined by the fact that Chambers has access to the Reuter Transfer Station for only a limited period of time while WMF has use of that facility for the long term. Specifically, the provision is designed to assure that WMF cannot tie up all customers that want to use the Reuter Transfer Station by offering long-term contracts when Chambers would be at a huge competitive disadvantage in offering similar contracts. The provision prohibits WMF from offering contracts for longer than a year through Reuter to existing Chambers customers using the Reuter facility since Chambers cannot offer long-term contracts until it builds its own facility.

Plaintiffs determined that allowing WMF to use the Reuter facility to offer long-term contracts could seriously undermine competition. Without long-term use of a facility, Chambers cannot effectively compete for long-term contracts. If WMF can do so, it will be able to disadvantage Chambers and, ultimately, consumers by tying up most, if not all, the customers in the market before Chambers can effectively compete for customers using long-term contracts. To preserve the long-term options of consumers while Chambers or other competitors establish a long-term presence, Plaintiffs placed a limit on the length of contract WMF could offer using the Reuter facility.

The limitation is narrowly drawn, however. First, the provision applies only to existing customers of Chambers using the Reuter facility. Second, the provision does not preclude WMF from offering long-term contracts to these customers if it uses any facility other than the Reuter Transfer Station to accept the waste. Third, it does not preclude WMF from competing with Chambers for these customers using short-term contracts. In effect, this provision prevents WMF from committing customers to long-term contracts through the use of Reuter while Chambers is unable to offer similar contracts. However, the protection is limited by WMF's ability

to continue to compete for these customers using either other sites or short-term contracts. The provision does not affect competition between Chambers and Dade County in any way.

#### D. Defendants' Obligations of Noninterference and Assistance

Obtaining permits and other governmental approvals constitute the largest barrier to entry into the municipal solid waste disposal market in the relevant geographic area. Section VII of the proposed Final Judgment prohibits any interference, directly or indirectly, by Defendants, including any action to protest, lobby against, object to, or otherwise impede any attempts by Chambers to lease, purchase, site, obtain appropriate zoning for, obtain permits and any and all other governmental approvals for a solid waste transfer station capable of serving the relevant market. It also prohibits Defendants from providing financing or other assistance to any person who does so. Finally, it obligates Defendants to cooperate with Chambers' efforts to obtain government permits and approvals on the property subject to the Option Agreement.

#### E. Acquisition of Optioned Property

Section VIII of the proposed Final Judgment prohibits Defendants from reacquiring the property subject to the Option Agreement from Chambers or its successors or assigns without the prior written consent of the United States, after consultation with Florida, for the life of the proposed Final Judgment.

#### F. Reporting and Access

Section IX of the proposed Final Judgment establishes standards and procedures by which the Department of Justice and Florida may obtain access to documents and information from Defendants related to its compliance with the Final Judgment.

#### G. Duration

Section X of the proposed Final Judgment provides that the Final Judgment will expire on the tenth year after its entry. Jurisdiction will be retained by the Court to conduct further proceedings relating to the Final Judgment, as specified in Section IX.

#### IV

##### *Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the

person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

#### V

##### *Procedures Available for Modification of the Proposed Final Judgment*

The United States, Florida, and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that Plaintiffs have not withdrawn their consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

#### VI

##### *Alternatives to the Proposed Final Judgment*

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Defendants. It also considered the possibility of requiring WMF to divest itself of the transfer

station buildings and related appurtenances before permitting it to acquire Reuter. The United States is satisfied, however, that the relief outlined in the proposed Final Judgment will eliminate WMF's ability to constrain prices or output by eliminating a competitor from the solid waste disposal market in the relevant geographic market. The relief obtained will maintain the competition in the market by creating an essentially independent transfer station for five years and also by providing property upon which an independent transfer station can be constructed to be in operation for the indefinite future. The relief sought eliminates anticompetitive effects in the short term by essentially maintaining the *status quo*. It preserves competition in the long term by providing time to build and by facilitating the construction of an additional competitive transfer station.

## VII

### *Standard of Review Under the APPA for Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448, 1462 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating

the benefits of prompt and less costly settlement through the consent decree process."<sup>6</sup> Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460. Precedent requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>7</sup>

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more

<sup>6</sup> 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. & Ad. News 6535, 6538.

<sup>7</sup> *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d at 565.

flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" (citations omitted).<sup>8</sup>

## VIII

### *Determinative Documents*

In formulating the proposed Final Judgment, the United States considered the following determinative materials or documents within the meaning of the APPA: the Transfer Station Agreement attached to the proposed Final Judgment as Exhibit A; the Amendment to Transfer Station Agreement attached to the proposed Final Judgment as Exhibit B; and the Option Agreement attached to the proposed Final Judgment as Exhibit C.

Dated: October 20, 1995.

Respectfully submitted,

Nancy H. McMillen,

Attorney, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307-5777.

### *Certification of Service*

I hereby certify that a copy of the foregoing has been served upon Waste Management, Inc. of Florida and Reuter Recycling of Florida, Inc., by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above named parties at the addresses given below, this 20th day of October, 1995.

Michael Sennett, Esquire,  
Bell, Boyd & Lloyd, 3 First National Plaza,  
70 West Madison Street, Chicago, IL 60602.

Andrew N. Cook, Esquire,  
Bell, Boyd & Lloyd, 1615 L Street, N.W.,  
Washington, D.C. 20036.

John H. Kornis,  
Oppenheimer, Wolff & Donnelly, 1020 19th  
Street, N.W., Suite 400, Washington, D.C.  
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Office of the Attorney General, State of  
Florida, The Capitol, Tallahassee, Florida  
32399-1050.

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5777.

[FR Doc. 95-27060 Filed 11-1-95; 8:45 am]

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<sup>8</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) quoting *United States v. Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).